IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

RCRev..No. 262 of 2005()

RCA.5/2003 of DISTRICT COURT, KALPETTA
RCP.29/2001 of MUNSIFF MAGISTRATE, SULTHAN BATHERI

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PETITIONERS:-
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1. VASU @ VASAL VASU, (WRONGLY STATED IN THE APPELLATE COURT JUDGMENT AS VASU @ VALAL VASU) S/O.CHEROOTTY, CHEMMANAMKUZHIYIL, PURAKKADI AMSOM AND DESOM, S.BATHERY, WAYANAD. (DIED).

Addl.2. KOMALAM, W/O.LATE VASU @ VASAL VASU, CHEMMANAMKUZHIYIL, PURAKKADI AMSOM AND DESOM, S.BATHERI, WYNAD.

Addl.3. SURAJ, SON OF DO. DO. IN DO. DO.

Addl.4. SURAJA, DAUGHTER OF DO. DO. IN DO. DO.

(Additional petitioners are impleaded as per order in IA.No.2541/2006 dated 28/8/2006)

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN

RESPONDENTS:-

K.V.VARGHESE, S/O.VARKEY,
KARIPPAKUDIYIL HOUSE, MEENANGADI,
S.BATHERY, WAYANAD.

BY ADV. SRI.BIJU ABRAHAM

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 9/10/2007, THE COURT ON 25/10/2007 PASSED THE FOLLOWING:

ORDER ON IA NOS.1966/05 & 1460/2007

DISMISSED.

25/10/2007 SD/- K. BALAKRISHNAN NAIR, JUDGE.

SD/- T.R. RAMACHANDRAN NAIR, JUDGE

//TRUE COPY //

P.S. TO JUDGE RR

K. Balakrishnan Nair &
T.R. Ramachandran Nair, JJ.

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R.C.R.NO.262 of 2005

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Dated this the 24th day of October, 2007

O R D E R

T.R. Ramachandran Nair, J.

The tenant is the revision petitioner. The question that arises is whether the landlord can maintain a subsequent petition for eviction of the tenant, if a previous application which was filed raising the same grounds, was dismissed as not pressed. The short facts are the following:

2. The present petition for eviction was filed under Section 11(2) (b) (arrears of rent) and 11(3) (bona fide need for own occupation), of the Kerala Buildings (Lease and Rent Control) Act, 1965 (for short 'the Act'). The premises was let out on 8.3.1984 for a monthly rent of Rs.275/-. The landlord gifted the same to the respondent herein, his son on 2.5.1997. The respondent herein filed R.C.P. No.26/1997, before the Rent Control Court, Kalpetta for an order of eviction under Sections 11(2) (b) and 11(3) of the Act. The premises were required for starting grocery business. It was dismissed as not pressed on 11.5.1998. Later on, the present R.C.P.No.16/1998 was filed for starting grocery business.

2. The tenant mainly contended that the dismissal of the earlier petition on

identical grounds is a bar to maintain the present petition. The bona fide purpose pleaded by the landlord was also resisted. The Rent Controller found that the bona fide need alleged is genuine and the rent is in arrears from November 1995 onwards. It was also found that the tenant is not depending for his livelihood mainly on the income derived from the business therein and that other suitable buildings are available in the locality for the tenant to carry on business. Therefore, the benefit of the second proviso to Section 11(3) of the Act was also found against the tenant. But the eviction petition was dismissed after finding that in view of the dismissal of the earlier petition as not pressed, the eviction petition is not maintainable. This finding was rendered after noticing that Order 23 Rule 1 (4) of the C.P.C. is applicable to rent control proceedings.

3. The landlord filed appeal under Section 18 of the Act which was allowed by the appellate authority. The findings on the grounds for eviction have been confirmed and it was also found that the tenant is not entitled to the protection under the first and second proviso to Section 11(3) of the Act. Relying upon a judgment of the Supreme Court in **N.R. Narayan Swamy v. Francis Jagan** (AIR 2001 SC 2469), it was held that as the provisions of Order 23 rule 1(4) C.P.C. have no application to proceedings under the Rent Control Act, the dismissal of the earlier petition as not pressed, is not a bar and therefore the eviction petition is maintainable.

4. We heard learned counsel on both sides. Learned counsel for the petitioner, Shri P.B. Krishnan submitted that as far as the Kerala Act is concerned, the bar is provided under Section 15 of the Act and therefore, the question has to be examined within the four corners of the said provision. It was submitted that the provision that was considered by the Apex Court in **N.R. Narayan Swamy v. Francis Jagan** (AIR 2001 SC 2469) under the Karnataka Act is entirely different and therefore the said decision is distinguishable.

5. First, we will refer to Section 15 of the Act. It bears the heading "Decisions which have become final, not to be reopened." The same is extracted below:

> **"15. Decisions which have become final not to be re-opened:--**
>
> The Rent Control Court shall summarily reject any application under sub-section (2), (3), (4), (5), (7) or sub-section (8) of Section 11 which raises between the same parties or between parties under whom they or any of them claim substantially the same issues as have been finally decided or purports to have been finally decided in a former proceeding under this Act or under the corresponding provisions of any law in force prior to the commencement of this Act or the corresponding provisions of any law repealed or superseded by such law."

Going by the section, the bar applies if "substantially the same issues as have been finally decided or purports to have been finally decided in a former proceeding under this Act", are again raised. Learned counsel submitted that importance has to be attached to the words "purports to have

been finally decided" and if so, a dismissal of the earlier petition as "not pressed", will cover the parameters of the said expression and this will act as a bar to maintain the second petition. It is submitted that under Section 45 of the Karnataka Act, which was considered by the Apex Court in the decision supra, the said limb is absent and the wording therein is that "substantially the same issues as have been finally decided in a former proceeding under this Act."

6. Learned counsel for the respondent Mr. Biju Abraham opposed the argument contending that there had not been any decision on merits in respect of the earlier eviction petition and as there was no final decision on the issues arising, the bar under Section 15 of the Act will not apply.

7. It is well settled that as far as bonafide requirement or non payment of rent is concerned, it is a recurring cause of action. The Apex Court in AIR 2001 SC 2469, in paragraph 6, while referring to a similar contention held that such a bar will not apply as there is recurring cause of action. It was held in paragraph 6 thus:

> "In our view, the High Court ought to have considered the fact that in eviction proceedings under the Rent Act the ground of bona fide requirement or non-payment of rent is a recurring cause and, therefore, the landlord is not precluded from instituting fresh proceeding. In an eviction suit on the ground of bona fide requirement the genuineness of the said ground is to be decided on the basis of requirement on the date of the suit. Further, even if a suit for eviction on the ground of bona fide requirement is filed and is dismissed, it cannot be held that once a question of necessity is decided against the landlord he will not have a bona fide and

> genuine necessity ever in future. In the subsequent proceedings, if such claim is established by cogent evidence adduced by the landlord, decree for possession could be passed."

While referring to Section 45 of the Karnataka Act and the requirement of finality attached to the former decision, their Lordships held that "fresh application under the rent act could be summarily rejected only if: (i) the proceedings are between the same parties or under whom they or any of them claim; and (ii) substantially the same issues as have been finally decided in a former proceeding under the Act are raised." Their Lordships held that the section as such incorporates the principles of res judicata and the aforesaid section would have no application, as the previous proceedings for taking possession of the premises were not pressed and stood disposed of without deciding any issue. It was also held that Order 23 Rule 1(4) has no application to decide the issue, as the ground of bonafide requirement is a recurring cause. Therefore, only if the earlier decision was rendered on merits, i.e., there was a final decision on the grounds raised, then the tenant can seek the assistance of Section 15 herein. But as held by their Lordships in paragraph 6 of the above decision, the ground of bonafide requirement or non payment of rent is a recurring cause and therefore the landlord is not precluded from instituting a fresh proceeding.

8. We also notice herein the decision of a learned Single Judge of this court (T.L. Viswanatha Iyer, J.) reported in **Pius v. Albina Rozario** (1990

(1) KLT 104). There, the first application was dismissed for default and it was held that the second application for eviction is maintainable. His Lordship was of the view that there was no final decision when the application is dismissed for default. In the context of Section 15, it was held as follows:

> "The only provision in the Act is S.15 which requires the Rent Control Court to summarily reject any application made under the specified sub-sections of S.11, which raises between the same parties or parties under whom they claim, substantially the same issues as have been finally decided or purported to have been finally decided in a former proceeding under the Act. Evidently this provision will not apply as there is no final decision when an application is dismissed for default. Even the dismissal on merits of a petition for eviction on the ground of bona fide need, does not bar a second petition. The position must a fortiori be so when the earlier dismissal was one for default, without a decision on merits."

The circumstances herein are similar and we respectfully agree with the reasoning adopted by the learned Single Judge in the above decision.

9. While interpreting the provisions of Section 15, a Division Bench of this court in **Govindan v. Subaida Beev**i (1997 (1) KLT 910), held that the section refers to **only issues finally decided or purports to have been finally decided** in a former proceeding under the Act. It was held that going by the wording of Section 15, applications filed under various sub sections of Section 11 of the Act are directed to be summarily rejected only if substantially same issues arising for consideration in such applications are shown to have been either decided expressly or purported to have been

decided already in a proceeding under the Act. Thus, the import is on a final decision on the issues, and not a summary rejection on technical grounds. In the light of the above dictum also, the contention raised by the petitioner that the second application is barred by the principles of Section 15, is not correct. In the earlier petition for eviction, there was no final decision on the issues arising between the parties. In the light of the argument raised, that there is a purported final decision as far as the former proceeding is concerned, the question has to be examined further. The meaning of the word 'purport' in Chambers 20th Century Dictionary, is given as follows:

> "n. meaning conveyed: substance, gist, tenor: outward appearance, guise, as conveying an impression (Spens.): purpose (rare).-- v.t. Purport' (also pur') to give out as its meaning: to convey to the mind: to seem, claim, profess (to mean, be, etc.): to purpose (rare). -- adv. Purportedly.-- purportless."

The meaning of the word 'purport' in The American Heritage Dictionary of the English Language, is given as follows:

> "1. To contain the claim or profession (to be or do something), 2. Rare. To have or give the appearance, often falsey, of being, professing, or intending – See synonyms at mean.--n (purport – port) The apparent meaning or purpose; import; significance. See Synonyms at meaning."

It indicates that the decision should convey a meaning, substance, gist, etc. When it is thus construed, the meaning of the term "purports to have been finally decided" indicates that the decision in a former proceeding should

reflect a final decision on the issues raised and not a dismissal on technical grounds like "not pressed", etc. As the word 'purports' also indicates a proper decision as having been arrived at by the court, the contention that it would take dismissals like the one in question, cannot be accepted. Section 15 clearly bars reopening of decisions which have become final and if a petition is dismissed as not pressed, it cannot be taken that there was a final decision on the issues arising in the matter, as the court had no occasion to go into the contentions of the parties and render a decision on such issues.

10. Learned counsel for the petitioner also relied upon the decision of a Division Bench of this court in **Muhammed Master v. Abu Haji** (1981 KLT 578) to contend for the position that a result of a case which is "not pressed" is also a decision and hence the bar under Section 15 will be attracted. The Division Bench was considering an election dispute under the Panchayat Act. The election petition contained allegations of corrupt practices. But the election petition was filed without complying with the relevant rules requiring the petitioner to set forth full particulars of corrupt and illegal practices. It was submitted by a separate interlocutory application for amendment which was dismissed by the learned Munsiff and thereafter a re-counting of votes was ordered. When the said order was challenged before this court by the returned candidate, this court directed the Munsiff to frame specific issue as regards the maintainability of the

petition on account of non compliance of Rule 5(5) of the Rules and to decide the issue preliminarily. When the matter was taken up afresh before the learned Munsiff, learned counsel for the election petitioner submitted that the grounds of corrupt practices alleged in the election petition are not pressed and the learned Munsiff, after accepting the said submission, found that the petition is maintainable. While examining the maintainability of the petition and the effect of not pressing the allegations of corrupt practices, it was held in paragraph 4 in the following manner:

> "As a result of 'not pressing' certain allegations and grounds raised in a pleading, a litigant submits that the issues arising therefrom may be decided against him and in favour of his opponent; and those issues are decided accordingly. It is virtually a decision by consent, in that the party asserting or disputing, concedes that his assertion or dispute, as the case may be merits no consideration as he cannot substantiate the same. The allegations are, however, there, and they are decided. Therefore, what has been said of consent decisions, namely- ".....the truth is, a judgment by consent is intended to put a stop to litigation between the parties just as much as is a judgment which results from the decision of the Court after the matter has been fought out to the end" (Lord Horschell in In re South American and Mexican Company, Ex parte Bank of England (1895-1 Ch.37), can, with much more force, be said of a decision that the allegations in the pleading have not been substantiated because they are not 'pressed' by the maker of those allegations. It cannot be said that the allegations which have been found and held to be not established, are withdrawn in such circumstances."

This court subsequently examined the question whether the petition can be stated to have been withdrawn as regards the said allegations. We find that the question has been examined in a different context altogether. No

provision like Section 15 of the Act arose for interpretation there. Further, in the light of the decision of the Apex Court referred to above, we find that the above observations by the Division Bench are not helpful to the petitioner herein. It was only a case where one of the grounds urged in the election petition was not pressed.

11. The courts below have concurrently found that the eviction petition is allowable on the grounds urged. It was found that there is arrears of rent and that the grounds pleaded for bona fide purpose are genuine. No grounds have been pointed out to upset the above findings before us. Therefore, the above findings call for no interference in exercise of the revisional jurisdiction of this court.

Therefore, the revision petition is dismissed. The tenant is granted six months' time from today to vacate the tenanted premises, on his filing an unconditional undertaking before the execution court, agreeing to vacate the premises within six months from today. He shall pay the arrears of rent, if any, and shall also continue to pay the monthly rent till the premises are

vacated. The undertaking in the form of an affidavit, shall be filed within three weeks from today.

(K. Balakrishnan Nair, Judge.)

(T.R. Ramachandran Nair, Judge.)

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